

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") shall be deemed entered into and effective as of September 16, 2016.

PARTIES:

Menefee Construction ("Plaintiff"); County of Fresno and Fresno County Transportation Authority (collectively referred to as "Settling Defendants").

RECITALS:

A. Plaintiff and Settling Defendants entered into a Contract on or about August 5, 2009, for a road reconstruction project known as Academy Avenue, Contract No. 08 – 11–C (hereafter referred to as the "Project"). Under the terms of the Contract, Plaintiff agreed to furnish labor and materials on the Project which involved the reconstruction of that segment of Academy Avenue located south of Manning Avenue to the south of North Avenue. The total contract amount was \$8,318,567.97.

B. The Project was substantially completed in or around March 28, 2011. Thereafter, Plaintiff and Settling Defendants engaged in a lengthy meet and confer process concerning claims for extra work.

C. On or about March 31, 2011, the County received a Stop Notice from Vulcan Materials, Plaintiff's material supplier on the Project for the total amount of \$1,159,797.05. Eventually, through stipulation of Plaintiff and the Settling Defendants, the County has interpleaded \$897,569.47. Pursuant to the Stipulation, Settling Defendants are obligated to deposit with the Court up to the full amount of the Stop Notice which is an additional \$262,227.58.

D. Plaintiff filed a lawsuit against the Settling Defendants on or about August 30, 2012 (hereafter the "Action".)

E. Plaintiff and the Settling Defendants hereto desire to settle and resolve in its entirety Plaintiff's claims against the Settling Defendants as well as any and all claims which are or could be asserted by Plaintiff against Settling Defendants which are in any way related to the Project and to reach a full and final settlement of the Released Claims, as defined herein below. This Agreement and release is also intended to apply as between claims of Settling Defendants among themselves.

F. Plaintiff and Settling Defendants acknowledge that they are resolving their disputes in order to avoid the costs of litigation and that, by entering into and performing this agreement, neither Plaintiff nor Settling Defendants admit any liability nor do they opine on the validity or invalidity of the claims asserted in the Action.

G. It is the intent of the parties that this release shall apply to all Released Claims which are or may be asserted at this time by Plaintiff against Settling Defendants and/or by Settling Defendants against Plaintiff, as well as any of Plaintiff's or Settling Defendants' predecessors in interest, agents, employees, partners, shareholders, officers, directors, parents, affiliates, subsidiaries, attorneys, insurance carriers, firms, or associates.

AGREEMENT:

In consideration for the promises and performances herein described, the parties hereby agree as follows:

1. Settlement and Release

Plaintiff, upon performance by Settling Defendants of the performance/consideration listed in Paragraph 2, below, shall dismiss the Action with Prejudice and hereby remises, releases, and forever discharges Settling Defendants (including all of Settling Defendants' past, present and future officers, shareholders, directors, partners, insurance carriers, agents, attorneys, accountants, employees, subcontractors, and materialmen, as well as the subsidiaries, affiliates, predecessor entities, and successor entities [and their officers, shareholders, directors, partners, insurance carriers, agents, attorneys, accountants, employees, subcontractors, and materialmen, as well as all successors, heirs, and assigns of each of the aforesaid]) from past, present, and future claims, actions, causes of action of any nature and for all liabilities and obligations of every kind and character, including without limitation and by way of example only, claims for personal injury, Project damage, loss of use, or diminution in value, existing from the beginning of time forward, which in any way directly or indirectly relate to or arise out of the Project, including, without limitation and by way of example only, any and all claims which relate to the design, construction, inspection, or warranty service of the Project, the improvements built thereon, and any component of the Project (the "Released Claims").

Similarly, the Settling Defendants, upon the performance identified in Paragraph 2, below, hereby remise, release, and forever discharge Plaintiff (including all of Plaintiff's and Settling Defendants' past, present and future officers, shareholders, directors, partners, insurance carriers, agents, sureties, attorneys, accountants, employees, subcontractors, and materialmen, as well as the subsidiaries, affiliates, predecessor entities, and successor entities [and their officers, shareholders, directors, partners, insurance carriers, agents, attorneys, accountants, employees, subcontractors, and materialmen, as well as all successors, heirs, and assigns of each of the aforesaid]) from past, present, and future claims, actions, causes of action of any nature and for all liabilities and obligations of every kind and character, including without limitation and by way of example only, claims for personal injury, Project damage, loss of use, or diminution in value, existing from the beginning of time forward, which in any way directly or indirectly relate to or arise out of the Project, including, without limitation and by way of example only, any and all claims which relate to the design, construction, inspection, or warranty service of the Project, the improvements built thereon, and any component of the Project.

This is a full and final release of all unknown and unanticipated injuries, and damages, arising out of or related to the claims for which releases have been given, as well as any past, present, and future claims and Plaintiff and Settling Defendants, and each of them, hereby waives all rights or benefits each such party now has or in the future may have pursuant to the claims for which releases have been given under the terms of Section 1542 of the Civil Code, which provides as follows:

A general release does not extend to the claim which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

2. Consideration and Performance.

(a) Subject to approval by the County of Fresno's Board of Supervisors and the Fresno County Transportation Authority Board, Settling Defendants shall cause to pay to Plaintiff the total sum of Five Hundred Thousand dollars (\$500,000), within twenty business days (20) of the date of the Fresno County Board of Supervisors scheduled for October 11, 2016. Settling Defendants shall deposit with the Court, pursuant to the parties' stipulation, Two Hundred Sixty-Two Thousand Two Hundred Twenty Seven dollars and Fifty-Eight cents (\$262,227.58). The balance of the settlement funds, Two Hundred Thirty Seven Thousand Seven Hundred Seventy Two dollars and Forty-Two cents (\$237,772.42) shall be paid to Plaintiff by check made payable to Menefee Construction.

(b) Upon receipt of the settlement funds, and in further consideration of the payments set forth in Paragraph 2(a) above, Plaintiff shall cause to be filed a Request for Dismissal with prejudice of all claims, with each party bearing its own attorney's fees and costs upon receipt of the settlement funds.

3. Advice of Counsel.

Plaintiff and the Settling Defendants have had the opportunity to consult with counsel relative to this Agreement and to have had the terms and conditions of same explained to them. To the extent Plaintiff and/or the Settling Defendants have elected or elect not to consult with counsel, they do so in a knowing, voluntary, and intelligent manner and elect to proceed nonetheless.

4. No Admission.

This Agreement is a compromise of disputed claims and fully and finally settles all claims between Plaintiff and the Settling Defendants to the Action, and is intended to buy peace and prevent any further involvement in this dispute. Neither the payment of any consideration hereunder or anything contained in this Agreement shall be interpreted or construed to be an admission on the part of, nor to the prejudice of, any person or party named herein and each such party or person hereto expressly denies any and all liabilities associated with or relating to settle litigation and claims described herein.

5. Final Settlement.

(a) The parties understand and agree that this Agreement shall act as a full and final release of all claims, known or unknown, whether or not asserted, arising from the above-mentioned dispute, except those claims specifically rising from this Agreement.

(b) Each party fully understands the facts in respect to which this Agreement is executed or found hereafter to be different from facts now believe by any party described herein to be true, each party expressly accepts and assumes the risk of each possible difference in facts and agrees that this agreement shall remain effective, notwithstanding such differences.

6. Modification Must Be In Writing.

This Agreement may not be altered, amended or modified, except by writing executed by duly authorized representatives of all parties.

7. Entire Agreement.

This Agreement states the entire agreement among the parties who have executed this Agreement and supersedes their prior agreements, negotiations or understandings. Each of these parties acknowledges and agrees that no other party, agent, or attorney of any of the parties made any promise, representation or warranty, express or implied, other than those set forth in this Agreement. Each party signing this Agreement acknowledges that such party has not executed this Agreement on reliance on any promise, representation, conduct or warranty of any other party not expressly set forth in this Agreement.

8. Binding Effect.

This Agreement shall bind and inure to the benefit of all successors, assigns, tenants, spouses, children, and heirs of the parties, as well as all past, present, and future occupants of the Project. Further, Plaintiff represents and warrants that no other person or entity has or claims to have any interest in the Project or the improvements thereon, other than the Stop Notice Claimant noted above, nor does any other person or entity have or claim to have any interest in any of the claims, demands, causes of action, obligations, damages or liabilities described herein. Plaintiff moreover represents and warrants that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability discussed herein.

9. Counterpart.

This Agreement may be executed in a number of counterparts and each counterpart signature shall, when taken with all other signatures, be treated as if executed upon one original of this Agreement. A facsimile signature of any party shall be binding upon that party as if it were an original signature.

10. Further Assurances.

To the extent any documents are required to be executed by any of the parties to effectuate this Agreement, each party hereto agrees to execute and deliver such other and further documents as may be required to carry out the terms of this Agreement.

11. Representations and Warranties.

The parties hereto represent and acknowledge that each of them has been represented by counsel with respect to this Agreement and all matter covered by and related to such agreement. Each party has been fully advised with respect to all rights which are affected by this Agreement and each party has authorized and directed their respective attorneys to execute and deliver such other and further documents as may be required to carry out the terms of the this agreement. The parties hereto further represent and acknowledge that neither party has assigned, sold or in any fashion in whole or in part, any of the rights, claims or causes of action which forms the basis of this Action, other than specified in this Agreement and no other persons or entities, has any rights, interest in or claims to such rights, claims, or causes of action other than those specified in this Agreement.

12. Authority.

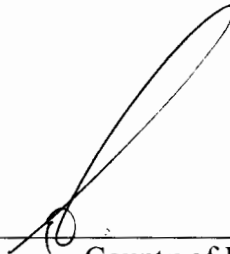
Each party to this Agreement represents and warrants that he or it is legally competent to execute this Agreement and accepts full responsibility therefore. Each person executing this Agreement on behalf of a corporation or other entity represents and warrants that he has the power and authority to execute this Agreement on behalf of the entity that he represents and that this Agreement has been duly authorized by the entity.

13. Final Paragraph.

This paragraph 13 is the final paragraph of the agreement executed by the parties.

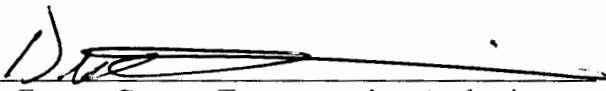
SIGNATURES OF THE PARTIES

Dated: 9/16, 2016



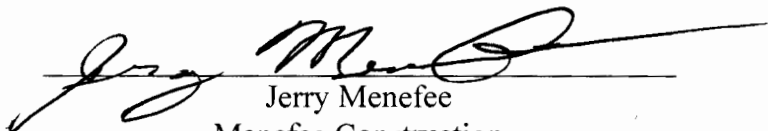
County of Fresno
Steve E. Light
Public Works Planning

Dated: 9/16, 2016



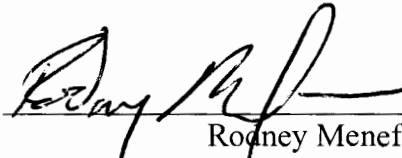
Fresno County Transportation Authority
Diana Sedigh-Darband
Interim Executive Director

Dated: 9/16/, 2016



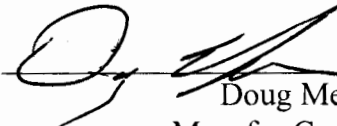
Jerry Menefee
Menefee Construction

Dated: 9/16, 2016



Rodney Menefee
Menefee Construction

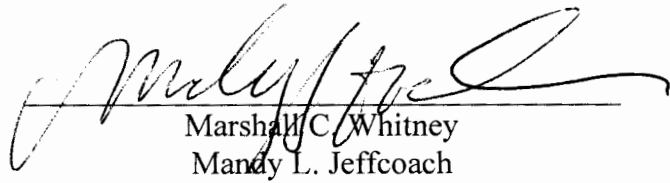
Dated: 9/16, 2016



Doug Menefee
Menefee Construction

APPROVED AS TO FORM.

Dated: September 16, 2016



Marshall C. Whitney

Mandy L. Jeffcoach

Attorneys for County of Fresno and Fresno
County Transportation Authority

Dated: September 16, 2016



Jerry Mann

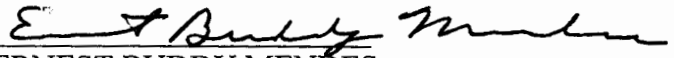
Daniel Stein

Attorneys for Menefee Construction

The Fresno County Board of Supervisors ("Board"), on this date of October 11, 2016, has approved this Settlement and Release Agreement, providing for full and final resolution of the above-referenced Action (*Menefee Construction v. County of Fresno, et al.*, Fresno County Superior Court Case No. Case No. 12 CE CG 02436), and has authorized the Chairman of the Board to execute this Settlement and Release Agreement on behalf of the County.

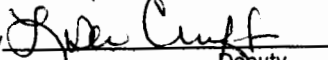
Dated: October 11, 2016

COUNTY OF FRESNO

By: 
ERNEST BUDDY MENDES
Chairman, Board of Supervisors

ATTEST:

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By: 
Deputy